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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARDS OF TRUSTEES OF THE
NORTHWEST PLUMBING AND
PIPEFITTING INDUSTRY HEALTH
WELFARE AND VACATION TRUST,
WASHINGTON STATE PLUMBING AND
PIPEFITTING INDUSTRY PENSION
PLAN, WESTERN WASHINGTON U.A.
SUPPLEMENTAL PENSION PLAN,
LOCAL 26 EDUCATION DEVELOPMENT
TRUST, NATIONAL PENSION FUND,
AND INTERNATIONAL TRAINING
FUND,

Plaintiffs,

v.

CASCADE PLUMBING &
MECHANICAL, LLC, UBI No.
602989306, a Washington limited liability
company, Contractors License No.
CASCAPM908CE and DAVID THEIL
and JANE DOE THEIL, and the marital
community, jointly and severally,

Defendants.

NO.

COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING
AGREEMENT AND DELINQUENT
CONTRIBUTIONS, ENFORCE TERMS OF
TRUST AGREEMENTS, BREACH OF
FIDUCIARY DUTY, CONVERSION and
UNJUST ENRICHMENT

The plaintiffs allege as follows:

I. PARTIES, JURISDICTION & VENUE

1. Plaintiffs are the Boards of Trustees of the Northwest Plumbing and Pipefitting Industry Health Welfare and Vacation Trust, Washington State Plumbing and Pipefitting Industry Pension Plan, Western Washington U.A. Supplemental Pension Plan, Local 26 Education Development Trust, MCI Fund, National Pension Fund, and International Training Fund (hereafter the “Trusts”). Trusts are joint labor-management trust funds created under Section 302(c) of the Labor Management Relations Act (“the Act”), 29 U.S.C. § 186(c) and the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, *et seq.* as amended.

2. Defendant Cascade Plumbing & Mechanical, LLC (hereafter “Cascade Plumbing”), a Washington limited liability company, is engaged in business within the jurisdiction of the court.

3. Cascade Plumbing’s principal offices are located in Elma, WA 98541.

4. The Boards of Trustees of the Trusts are fiduciaries as defined by ERISA §402(a)(1), 29 U.S.C. § 1102(a)(1).

5. ERISA §409, 29 U.S.C. 1109, provides that suit may be brought for breach of fiduciary duty and the fiduciary shall be personally liable for any breach.

6. ERISA §3(21)(A) includes in the definition of a fiduciary anyone who “exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets.” 29 U.S.C. 1002(21)(A).

7. The definition of “plan assets” includes “amounts that a participant has

1 withheld from his wages by an employer, for contribution to the plan, as of the earliest date on
2 which such contributions can be reasonably segregated from the employer's general assets."
3 29 CFR §2510.3-102.

4 8. Defendant David Theil and Jane Doe Theil, are the Owners of Cascade
5 Plumbing.

6 9. Defendants David Theil and Jane Doe Theil are Washington Residents.

7 10. Cascade Plumbing performs business in King County.

8 11. Jurisdiction and venue are conferred on this court by the Trust Agreements and
9 Section 502 of ERISA, 29 U.S.C. §1132.

10 II. FIRST CLAIM FOR RELIEF: BREACH OF COLLECTIVE BARGAINING
11 AGREEMENT/DELIQUENT CONTRIBUTIONS

12 12. The Trusts re-allege the facts set forth in paragraphs 1 through 11 above as if
13 stated fully herein, and further allege as follows:

14 13. At all material times, Cascade Plumbing has been signatory to a collective
15 bargaining agreement ("CBA") with the Plumbers and Pipefitters United Association, Local
16 26. Pursuant to the CBA, the Cascade Plumbing is bound by the Trust Agreements, which are
17 incorporated into the CBA by reference.

18 14. The CBA and Trust Agreements require Cascade Plumbing to make
19 contributions to the Trusts on behalf of covered employees.

20 15. At all material times, Cascade Plumbing has employed employees for whom
21 employee contributions and/or withheld wages are due under the CBAs.

22 16. At all material times, Cascade Plumbing has failed and/or refused to timely

1 make required monthly contributions for such employees to the Trusts.

2 17. Cascade Plumbing owes \$90,817.23 in contributions to the Trusts for
3 December 2015 through August 2016.

4 18. Cascade Plumbing owes an unknown amount of contributions for September
5 2016 through current. The final amount will be proven on motions or at trial.

6 19. Under the terms of the CBAs, Trust Agreements and ERISA section 502(g)(2),
7 Cascade Plumbing is obligated to pay liquidated damages, interest, reasonable attorney's fees,
8 and costs and expenses of suit.

9 20. For the delinquent period of December 2015 through August 2016, Cascade
10 Plumbing failed to make timely payment of its contributions resulting in \$30,289.73 in
11 liquidated damages, \$6,138.23 in interest (through October 25, 2016), and \$900 in referral
12 attorney fees.

13 21. Cascade Plumbing owes an unknown amount in liquidated damages, interest,
14 and referral attorney fees for the months of September 2016 through current. The final
15 amount will be proven on motions or at trial.

16 III. SECOND CLAIM FOR RELIEF: DEMAND FOR AUDIT OF PAYROLL
17 RECORDS

18 22. The Trusts re-allege the facts set forth in paragraphs 1 through 21 above as if
19 stated fully herein, and further allege as follows:

20 23. At all material times, Cascade Plumbing, was, and is, obligated to perform in
21 accordance with the terms of the CBAs, and the incorporated Trust Agreements.

22 24. Cascade Plumbing's CBA, and the incorporated Trust Agreements, authorize

1 the Trusts to audit contributing employers' books and records.

2 25. The Trusts have requested documents and payroll records necessary to
3 complete an audit of its books and records for the period of October 2015 through current.

4 26. As of the date of this Complaint, Cascade Plumbing has refused to provide the
5 documents and payroll records necessary to complete an audit of its books and records for the
6 period of October 2015 through current.

7 IV. THIRD CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY

8 27. The Trusts re-allege the facts set forth in paragraphs 1 through 26 above as if
9 stated fully herein, and further allege as follows:

10 28. Included in Cascade Plumbing's contribution obligation was the obligation to
11 withhold and submit *employee* contributions withheld from its employees' paychecks to the
12 Trusts.

13 29. For the period of December 2015 through current, Cascade Plumbing withheld
14 an unknown amount in *employee* contributions from its employees' paychecks.

15 30. Defendant David Theil, is the owner/principal of Cascade Plumbing for the
16 relevant period of December 2015 through current.

17 31. Defendant David Theil and Jane Doe Theil, and the marital community, jointly
18 and severally, exercised control over plan assets, as defined by 29 CFR §2510.3-102, when
19 they failed to remit the employee contributions to the Trusts.

20 32. Defendant David Theil and Jane Doe Theil, and the marital community, are
21 jointly and severally liable for breach of fiduciary duty for failure to remit *employee*
22 contributions to the Trusts.

33. Defendant David Theil and Jane Doe Theil, and the marital community, breached ERISA §409, 29 U.S.C. 1109, and ERISA §515, 29 U.S.C. §1145, when they failed to remit employee contributions to the Trusts.

34. Defendant David Theil and Jane Doe Theil, and the marital community, are jointly and severally liable for \$20,403.37 in withheld but unremitted employee contributions and for an unknown amount in employee contributions for the period of September 2016 through current.

35. In accordance with ERISA §502(g)(2), 29 U.S.C. 1132(g)(2), and the terms of the Trust Agreements creating the Trusts and under federal statutory law, Defendant David Theil and Jane Doe Theil, and the marital community, jointly and severally, are obligated to pay liquidated damages of 10% the amount of contributions outstanding, interest at 12% per annum from the due date, reasonable attorney's fees, and costs and expenses of suit.

V. FOURTH CLAIM FOR RELIEF: PERSONAL LIABILITY FOR CONVERSION OF DUES, 401k CONTRIBUTIONS AND VACATION CONTRIBUTIONS

36. The Trusts re-allege the facts set forth in paragraphs 1 through 35 above as if stated fully herein, and further allege as follows:

37. The CBA signed by Cascade Plumbing requires that union dues, 401k contributions and vacation contributions be withheld from the employees' paychecks.

38. The CBA requires that Cascade Plumbing remit the withheld union dues, 401k contributions and vacation contributions to the Trusts and Local 26.

39. The CBA provides that the union dues, 401k contributions and vacation contributions are immediately due and owing to the Trusts and Local 26.

1 40. Defendant David Theil is the owner of Cascade Plumbing for the relevant
2 period of December 2015 through current.

3 41. Defendant David Theil interfered with the Trusts' and Local 26's possession of
4 the employees' union dues, 401k contributions and vacation contributions when he failed to
5 remit those withheld funds to the Trusts.

6 42. Defendant David Theil intentionally interfered with the Trusts' and Local 26's
7 possession of the employees' union dues, 401k contributions and vacation contributions by
8 refusing to remit them to the Trusts to date.

9 43. As a result of David Theil's refusal to remit his employees' union dues, 401k
10 contributions and vacation contributions withheld from employees' paychecks, the Trusts and
11 Local 26 have suffered a loss of an unknown amount to be proved on motions or at trial.

12 44. Defendant David Theil, acting as an officer of Cascade Plumbing, is personally
13 liable for conversion of union dues, 401k contributions and vacation contributions owed to the
14 Trusts in an unknown amount to be proven on motions or at trial.

15 VI. FIFTH CLAIM FOR RELIEF: CONVERSION OF WAGES

16 45. The Trusts re-allege the facts set forth in paragraphs 1 through 44 above as if
17 stated fully herein, and further allege as follows:

18 46. Beginning December 2015 through current, Cascade Plumbing and David
19 Theil knowingly took possession of the union dues, 401k contributions and vacation
20 contributions, withheld from the paychecks of Cascade Plumbing's employees.

21 47. Cascade Plumbing, David Theil and Jane Doe Theil, and the marital
22 community, are personally and jointly and severally liable for conversion of wages withheld

1 from Cascade Plumbing's employees' paychecks in an amount to be proved on motions or at
2 trial.

3 48. As of the date of this Complaint, Cascade Plumbing and David Theil have not
4 made arrangements for payment of the converted funds.

5 VII. SIXTH CLAIM FOR RELIEF: UNJUST ENRICHMENT

6 49. The Trusts re-allege the facts set forth in paragraphs 1 through 48 above as if
7 stated fully herein, and further allege as follows:

8 50. By receiving the withheld wages from Cascade Plumbing's employees'
9 paychecks, David Theil and Jane Doe Theil, and the marital community, obtained a benefit
10 from the Trusts and the employees.

11 51. David Theil had knowledge of this benefit.

12 52. David Theil knew or should have known that he was not the intended recipient
13 of the withheld union dues, 401k contributions and vacation contributions and that said
14 benefits should have been remitted to the Trusts for payment to the intended recipients.

15 53. The acceptance and retention by Cascade Plumbing, David Theil and Jane Doe
16 Theil, and the marital community, of the benefit under such circumstances was such that it
17 was inequitable for Cascade Plumbing, David Theil and Jane Doe Theil, and the marital
18 community to retain the benefit and Cascade Plumbing and/or David Theil and Jane Doe
19 Theil, and the marital community have been unjustly enriched.

20 54. Cascade Plumbing, David Theil and Jane Doe Theil, and the marital
21 community, are personally and jointly and severally liable to the Trusts for unjust enrichment
22 in an amount to be proved on motions or at trial.

VIII. PRAYER FOR RELIEF

The Trusts pray for judgment as follows:

- A. 128,145.19 to the Trusts, comprised of \$90,817.23 in contributions, \$30,289.73 in liquidated damages, \$6,138.23 in interest (through October 25, 2016), and \$900 in referral attorney fees for the delinquent period of December 2015 through August 2016;
- B. Against Cascade Plumbing & Mechanical, LLC for all amounts found to be due and owing for September 2016 through current;
- C. An order requiring Cascade Plumbing & Mechanical, LLC to submit to an audit and provide all the documents and payroll records necessary to complete an audit of its books and records for the period of October 2015 through current;
- D. Against Cascade Plumbing & Mechanical, LLC for all amounts found to be due and owing for the audit period of October 2015 through current;
- E. Against David Theil and Jane Doe Theil, and the marital community, jointly and severally, for or all amounts found to be due and owing for the withheld union dues, 401k contributions and vacation contributions for the period of December 2015 through the date of entry of judgment;
- F. Against David Theil and Jane Doe Theil, and the marital community, jointly and severally, for the assessed interest and liquidated damages on the withheld employee contributions;
- G. For reasonable attorneys' fees, costs, and expenses of suit; and

1 H. For such other and further relief as this court deems just and equitable.
2

3 DATED this 25th day of October, 2016.

4 /s/ Noelle E. Dwarzski
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